



Promoting Sustainability by Education, Advocacy and Community Events
Citizens and Neighbors for a Sustainable Redmond, P.O. Box 2194, Redmond, WA 98073

September 25, 2014

advance copy via email

The Honorable Dow Constantine
King County Executive
King County Chinook Building
401 Fifth Avenue, Suite 800
Seattle, WA 98104

The Honorable Kathy Lambert, District 3
King County Councilmember
King County Courthouse
516 Third Avenue, 12th Floor
Seattle, Washington 98104

Subject: Opposition to Proposed Gunshy Manor Development along the Red Brick Road

Sustainable Redmond is a grassroots organization with the mission of being a catalyst for moving Redmond's citizens, businesses, and local government toward sustainability. Therefore, we advocate transparency in City and County development processes, better public notice of development proposals and full community engagement throughout¹.

We wish to bring your attention to a proposed development (Gunshy Manor) on the Red Brick Road, which is a historical landmark in King County. The Red Brick Road (located on 196th Ave NE between SR 202 and NE Union Hill Road) is adjacent to the boundary of the City of Redmond and is an important historic and agricultural valley that preserves more than a mile of paved road from the original Yellowstone Trail, dating from 1913. The road runs through more than 100 acres of intact wetlands, some privately owned and some preserved as the Evans Creek Natural Area. It has come to our attention that King County is in the process of receiving pre-applications for a new development project along the road that will build 25 additional homes on property immediately adjacent to Evans Creek Natural Area.

There are a range of direct, indirect and cumulative environmental impacts which should be addressed in the process of a full SEPA review to include:

WETLAND PROTECTION

Evasion of County Wetland Protection Regulations: The owners of the subject property have been actively filling and channelizing a part of the Evans Creek wetland and building impervious surface roads in the wetland buffer for a number of years, without any permits and without a Farm Management Plan. This activity appears to be an attempt to evade environmental laws by providing County regulators with a fait accompli: land whose hydrological connection to the (now degraded) wetland has been severed, thus justifying proposals to reduce the wetland buffers required by law and enabling more houses to be built.

Violation of County Wetland Protection Regulations: The public record indicates that the county has received multiple complaints for several years regarding this activity. Until recently, these complaints have resulted in investigations that were closed with no violations found, despite eyewitness testimonials, photographs and direct on-site inspection. During this time many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law. Imagery of this activity is available on Google Earth and in satellite imagery contained in King County's own data bases. Until recently the county has done nothing to prevent this activity which also contributes to increased flood risks in near-by properties as surrounding hydrology is affected.

¹ In this regard, please see the attachment which assesses issues related to public process and transparency.

Enforcement of County Wetland Protection Regulations: Sustainable Redmond would appreciate an explanation from the County for why multiple inspections of the site during the past five years have found no evidence of wrongdoing. However, when the last formal complaint was received by your office several months ago, copying state and federal officials, suddenly a set of violations were discovered, as if they had happened the day before (please refer to ENFR14-0512).

Redress Requested: To remedy this situation, we are calling on the County to ensure that the wetland habitat and surrounding hydrology are fully restored to their original state, and that all of the roads that were illegally built in the wetland habitat and its legal buffer are removed.

HABITAT AND TREE PRESERVATION

Habitat Protection: Wetlands are a vital and dwindling habitat in King County, especially in the areas that have been most affected by urban sprawl. Sustainable Redmond believes that the Evans Creek Natural Area is worthy of stronger protection than the county has provided to date. The wetland provides important habitat to endangered species of Chinook salmon as well as other protected species including Red Tail Hawks, Great Blue Herons, Bald Eagles, Coho Salmon, Kokanee Salmon and Vaux's Swifts. In addition, rare birds such as the American Bittern have been sighted using the wetland for nesting purposes. The filling and building activities have impacted wildlife and disrupted the hydrology of the wetland complex. The quality of the wetland habitat could be further compromised by a centralized septic system proposed for the project that would be located near the wetland buffer.

Upland Tree Preservation and Landslide Risk: Based on the development plans provided to the local community by the developer, at least 10 acres of mature Douglas fir forest on the slopes of Union Hill will be cleared to make room for new houses. Sustainable Redmond is very concerned about the loss of trees on this scale, particularly as these forests provide important upland habitat to species that use the Evans Creek Natural Area. Further, these trees are located in a County-mapped "landslide hazard area" and landslide risk would be increased by the removal of the soil retention qualities of this tree cover.

INTENSIFICATION OF USE

Community Character and Cultural Impact: In addition to the environmental impact of this development, Sustainable Redmond would like the County to consider the broader impact of the project on the historic area and the community that lives there. The developer intends to use a method known as "clustering" to develop homes on one-acre lots, even though the area is zoned as RA-5. This practice is inappropriate in this particular location, as it does not meet any of the criteria established by the County Comprehensive Plan, and is entirely unaligned with the character of the Red Brick Road neighborhood. Building a gated community of 25 homes on 25 acres of allegedly developable land, including roads, sidewalks, street lights and septic fields, would irreversibly destroy the historically rural and agricultural character of the road and the valley. This is not sustainable development in any sense of the word.

Traffic: Last year, the King County Landmarks Commission issued Certificate of Appropriateness #1318, authorizing the developers to use the Red Brick Road as primary access, approving an additional 2,162 daily trips on the historic road. This is a road designed over a century ago, whose condition is already significantly degraded. The Red Brick Road is too narrow (18') and lacks proper shoulders to meet even the most basic safe design standards. (Any development along the Red Brick Road will require an exception to KCC 14.42.040, which requires developers to improve impacted roads to county design standards.) Because the road cannot be modified, the balance between safety and history must be accomplished by making every effort possible to limit traffic on the road. Developing the subject property at the zoned RA-5 level will reduce the projected increase in traffic volume by 80% since five homes could be built, rather than the 25 planned for in the proposed development.

In conclusion, Sustainable Redmond would like to ensure that any development that occurs in this area is environmentally and socially sustainable. To that end, we ask the County to assure the following:

- 1) All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetland areas and their buffers must be restored to their original state.
- 2) All new development must be performed within the legal guidelines established by the County for all of its citizens, with a transparent public process that includes all interested parties. This includes requiring a full SEPA assessment, as well as effective enforcement by County regulators of the full critical area buffers prescribed by law - including wetland and landslide hazard areas.
- 3) All new development must respect the established zoning. The County should reject any new proposals involving clustered development along the Red Brick Road.
- 4) The Certificate of Appropriateness #1318 issued by the King County Landmarks Commission should be revoked. All new development in this area must be reviewed to ensure that it does not add significant traffic to the already over-used Red Brick Road.

Thank you for your attention, and please feel free to contact Sustainable Redmond if there is anything we can do to assist in finding alternative solutions that will benefit all parties involved in this matter. We would like to become parties of record in this proceeding.

Respectfully,

Robert Berg, Co-Chair
Sustainable Redmond

Thomas Hinman, Secretary
Sustainable Redmond

Attachment: Assessment of Public Process and Transparency Regarding Gunshy Manor

Copy by email to:

Rhonda Berry	Chief of Operations, Office of the County Executive
Jeff McMorris	Chief of Staff, Office of Councilmember Kathy Lambert
John F. Starbard	Director, Permitting and Environmental Review, King County
Christie True	Director, Department of Natural Resources & Parks (DNRP)
Bob Burns	Assistant Director, DNRP
Julie Koler	Historic Preservation Officer, DNRP
Randy Sandin	Line Manager, Department of Permitting & Environmental Review (DPER)
Sheryl Lux	Line Manager, Code Enforcement, DPER
Molly Johnson	Managing Engineer, DPER
Jeri Breazeal	Code Enforcement Officer, DPER
Michael Szerlog	Manager, Aquatic Resources, U.S. EPA Region 10
Chan Pongkhamsing	CWA Section 404 Enforcement Coordinator, U.S. EPA Region 10
Jonathan Smith	North King County Regulatory Program Manager, US Army Corps of Engineers
Maia Bellon	Director, Washington State Department of Ecology
Erik Stockdale	Manager, Shorelands & Environmental Assistance, Washington Department of Ecology
Phil Anderson	Director, Washington State Department of Fish & Wildlife
Stewart Reinbold	Assistant Regional Habitat Program Manager, Washington Department of Fish & Wildlife
David Garland	Watershed Unit Supervisor, Water Quality Program, Washington Department of Ecology

Red Brick Road Community Neighbors

Assessment of Public Process and Transparency regarding Gunshy Manor

Preface: Sustainable Redmond has evaluated local government actions to date regarding the Gunshy Manor property in light of our mission to increase transparency, accountability and effectiveness. These are our findings.

1. Expanded Red Brick Road Usage

The Certificate of Appropriateness (COA) “approved” by the King County Landmarks Commission on November 19, 2013 on the recommendation of the King County Design Review Committee (a sub-committee of the Landmarks Commission) only screened broader environmental issues and violations of Federal regulatory provisions. Primacy in this proposed development clearly rests in federal statutes – the Clean Water Act and Endangered Species Act plus the US Fish and Wildlife Service National Wetlands Inventory Program in which the Army Corps of Engineers district office plays a regulatory role – and in County designation of wetland and endangered species supporting those Federal regulations. The King County Landmark and national historic status of the Red Brick Road is important from the local to the national level. This does not give the Landmark Commission the prerogative to subvert the rural community character built around this iconic, 100-year-old roadway and abdicate responsibility of their mission to “ensure that the historic places, material culture, and traditions which best reflect the region's 13,000 years of human history are preserved for future generations.”

2. Standing of the Type II Certificate of Appropriateness Approval

The joint DNPR/DPER letter of August 4, 2014 addressing Community Concerns states that the COA was provided for “guidance” in the event that a development proposal was forthcoming². If it was only intended as an advisory opinion, it was premature to have gone through the COA process and the application should have been rejected. Correspondence between the neighborhood and county leadership reveals some ambiguity in the standing and purpose of the COA. Is it really informal guidance pending an actual development application or is it, per the November 22, 2013 COA document, the final decision to be “registered with the King County Recorder to run with the land” that is not now subject to appeal? It has all the appearance of the latter, especially because the County has stated in correspondence that the criteria in the COA will be used to evaluate any future development proposals of the Gunshy Manor property.

3. Transparency of Certificate of Appropriateness Approval

The process that led to COA approval appears to deliberately avoid the public notification process that would have brought some transparency to the proceedings. There was no notification to the community of either the fast-tracked Landmark Commission deliberations on November 19, 2013 or their subsequent decision so that public members could avail themselves of the 35 day appeal period. Granting of the COA was only made known to the community when revealed by the developer, 6 months after the fact. King County Code 20.62 states that full public notice will be given when a Type II certificate is under consideration³. This does not seem to be the case in this

² Because the Certificate of Appropriateness was not required when it was sought and **was issued only as guidance** for a then-unidentified development proposal, the Certificate does not need to be revoked or remanded. If and when a formal development application is submitted to DPER, the public will be notified and will have opportunity to comment and raise issues. Further, if and when a formal application is submitted, DPER will confirm with the Historic Preservation Officer that the specific proposal meets the criteria established in the Certificate of Appropriateness.” Page 3, Paragraph 1 (Emphasis added)

³20.62.080 C4 **The historic preservation officer shall mail notice of the hearing to the owner, the applicant, if the applicant is not the owner, and parties of record at the designation proceedings, not less than ten calendar days before the date of the hearing. No hearing shall be required if the commission, the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated certificate approving the requested alterations thereof. This agreement shall be ratified by the commission in a public meeting and reflected in the**

instance. Without public notice, community members cannot become parties of record or know to watch meeting agendas (if promulgated) to inform themselves of development actions in their neighborhood. Neither can they seek redress through an appeals process.⁴ Further, there is an opaque quality to both the DRC decision process and any agreement between property owners and Landmark Commission that occurs out of the public eye. None of this suggests a local government that is interested in a transparent and accountable process.

4. Lax Enforcement of Federal Statutes reflected in King County Code

Despite a history of neighborhood complaints regarding destruction of federally-protected wetlands and habitat including county-designated sensitive areas over a period of approximately 5 years, the County did not initiate enforcement action until June 26, 2014 – by coincidence exactly a week after the community had expressed their concern in a letter to elected leadership in King County with copies to state and federal authorities. A letter to the property owner confirming violation of multiple King County Code provisions resulting from construction activities in environmentally critical areas and buffers was subsequently sent on August 7, 2014⁵ following a July 31, 2014 site visit that included an official from the Environmental Protection Agency. A distinctly disinterested attitude seemed to characterize code enforcement practices until this matter was elevated to elected officials. The prompt County leadership response to documented environmental concerns governed by Federal statute as raised by the Red Brick Road neighborhood is appreciated. Such extraordinary measures should not have been required to ensure regulatory compliance and enforcement actions should have been taken much earlier. Selective enforcement of this nature can easily be interpreted as a sign of favoritism toward certain parties – exactly the opposite of transparent and accountable government.

5. Future Public Engagement in Gunshy Manor Development Process

Opportunities for public comment on development proposals are embedded in arcane bureaucratic processes that communities may not learn about until it is too late for them to have their voices heard, much less acted upon by jurisdictions relied upon to guard the public trust. While public comment only is only sought in specific development situations, the sense of the community should also be honored as staff becomes aware of it and act to provide more transparency rather than less. Promising to notify the community about future opportunities to comment does not atone for perceptions that their views have been ignored in the past. Further, sale of the subject property to a third party can obviate assurances made by the current property owner, however positive they may be. A full and complete dialogue between the Red Brick Road community, County staff and private developers is in the interest of all concerned before decisions on the future of the area are finalized. It is inconceivable that the character of a community distinguished by a historic landmark like the Red Brick Road could be jeopardized in this fashion without a transparent process with full public input and a sense of community consent.

commission meeting minutes. If the commission grants a certificate of appropriateness, such certificate shall be issued forthwith and the historic preservation officer shall promptly file a copy of such certificate with the director. (Emphasis added.)

⁴ 20.62.110 Appeal procedure.

A. **Any person aggrieved by a decision of the commission** designating or rejecting a nomination for designation of a landmark or issuing or denying a certificate of appropriateness **may, within thirty five calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance or denial or approval of a certificate of appropriateness appeal such decision in writing to the council.** The written notice of appeal shall be filed with the historic preservation officer and the clerk of the council and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

B. If, after examination of the written appeal and the record, the council determines, that: 1. An error in fact may exist in the record, it shall remand the proceeding to the commission for reconsideration or, if the council determines that: 2. the decision of the commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the commission

⁵ Violation Code Enforcement Case ENFR14-0512 reflected in DPER notice letter of August 7, 2014.